

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

In Re Application of Peter H. Burno Regarding the Spur Tracks on His property in the City of Edgerton, Rock County

9170-RX-200

FINDINGS OF FACT AND ORDER

On August 12, 2005, Mr. Peter H. Burno filed an application with the Office of the Commissioner of Railroads (OCR) under §190.16, Stats, for authority to remove three spur tracks, once used for sidings or, in the alternative, for a finding that they have been abandoned. The spur tracks to which the petition pertains are on land in which petitioner claims an interest and which north of the crossing of the tracks of the Wisconsin and Southern Railroad Co. by Main Street in the City of Edgerton, Rock County.

Pursuant to due notice, public hearing was held in this matter on November 30, 2005 in Edgerton, Wisconsin with hearing examiner Douglas S. Wood presiding. The matter was uncontested. Therefore the Office of the Commissioner of Railroads issues this final order without first issuing a proposed decision.

Appearances:

**Parties**

Peter H. Burno, Petitioner  
1343 Veek Road  
Stoughton, WI 53589

As Interest May Appear:

Wisconsin & Southern Railroad Company  
by  
Bernard M. Meighan, Superintendent of Maintenance  
1890 E Johnson Street  
Madison, WI 53704

**Jurisdiction**

Section 190.16 (5) grants the OCR authority over the removal of any spur track constructed after June 16, 1925. On January 1, 1996, however, the Interstate Commerce Commission (ICC) Termination Act of 1995 (Termination Act) took effect. The Termination Act limits, but does not totally preempt OCR jurisdiction over spur track removals. The Termination Act preempts the OCR's jurisdiction over the discontinuance or abandonment of spur tracks, but does not preclude OCR jurisdiction where a spur track has been previously abandoned, but still physically remains in place.

While the sweeping jurisdictional language of the Termination Act preempts the OCR's jurisdiction over the abandonment of spur tracks, the OCR does retain a residuum of authority over spur tracks. The STB's jurisdiction extends to those spur tracks which are part of the interstate rail network. Abandoned or discontinued spur tracks are no longer part of the interstate rail network and thus no

longer subject to the STB's exclusive jurisdiction. The OCR, then, retains jurisdiction over the removal of spur tracks that have been abandoned or discontinued, but not physically removed.

In order for the OCR to determine whether it possesses jurisdiction in this matter, it must first determine whether the spur tracks have in fact been abandoned. In making this finding, the OCR is not determining whether a spur track should be abandoned, but only whether it has been abandoned.

Under § 85.09, "abandonment" has occurred when the "the use of rail property for railroad or railway purposes has been discontinued with the intent not to resume. Intent not to resume may be inferred from circumstances including, but not limited to, the following: 1. If the rail property is not used for railroad purposes for 2 consecutive years. 2. If the facilities on the rail property are removed or rendered unfit for service. 3. If the rail property is used for other than railroad purposes." The OCR will presume that spur tracks remain part of the interstate rail network until evidence shows the contrary.

The spur tracks in question (marked A, B and C on Exhibit 1) lie at least partially on property owned by Peter Burno have not been used in some 20 years according to the railroad. The railroad considers the spur tracks to be abandoned and has no intention to use these tracks in the future. The tracks have either been removed or buried.

The property in question is located in the northwest quadrant of the intersection of Main Street and W. Lawton Street. The City of Edgerton supports the abandonment declaration to facilitate potential redevelopment of the site. The spur tracks also extended across Main Street to the east.

The Commissioner concludes that the designated tracks have been legally abandoned and authorizes the removal of any remaining tracks.

THEREFORE, IT IS ORDERED,

1. That the entire spur tracks marked A, B and C on Exhibit 1 have been legally abandoned.
2. That the owner(s) of the property on which the spur tracks are located is authorized to remove or otherwise dispose of any remnants of the entire spur tracks marked A, B and C on Exhibit 1.

Dated at Madison, Wisconsin, December 8, 2005.

By the Office of the Commissioner of Railroads.

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Rodney W. Kreunen  
Commissioner of Railroads